

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**THE ESTATE OF ROOSEVELT
HOLLIMAN; and MICHELLE
LUMZY, individually and in her
capacity as the Administratrix of
the Estate of Roosevelt Holliman**

PLAINTIFFS

V.

NO. 4:22-CV-75-DMB-JMV

MARSHAL TURNER, et al.

DEFENDANTS

ORDER

On September 29, 2023, United States Magistrate Judge Jane M. Virden issued a Report and Recommendation (“R&R”) recommending “this case be dismissed, without prejudice, pursuant to Fed. R. Civ. P. 4(m) and Fed. R. Civ. P. 41(b) for failure to timely prosecute as to Defendants Chanel Red Conner, Timothy Morris, and Mike Hatten in their individual capacities.” Doc. #109 at PageID 630. The R&R warned that “[f]ailure to timely file written objections to the proposed findings[,] conclusions and recommendations … will bar … attacking on appeal unobjected-to proposed factual findings and legal conclusions accepted by the district court” “except upon grounds of plain error.” *Id.* No objection to the R&R was filed.

Under 28 U.S.C. § 636(b)(1)(C), “[a] judge of the court shall make a de novo determination of those portions of the report … to which objection is made.” “[P]lain error review applies where a party did not object to a magistrate judge’s findings of fact, conclusions of law, or recommendation to the district court despite being served with notice of the consequences of failing to object.” *Quintero v. State of Texas – Health and Hum. Servs. Comm’n*, No. 22-50916, 2023 WL 5236785, at *2 (5th Cir. Aug. 15, 2023) (cleaned up). “[W]here there is no objection, the Court need only determine whether the report and recommendation is clearly erroneous or

contrary to law.” *United States v. Alaniz*, 278 F. Supp. 3d 944, 948 (S.D. Tex. 2017).

Because the Court reviewed the R&R for plain error and concludes the R&R is neither clearly erroneous nor contrary to law, the R&R [109] is **ADOPTED** as the order of the Court. All claims against Chanel Red Conner, Timothy Morris, and Mike Hatten in their individual capacities are **DISMISSED without prejudice**.¹ A final judgment will be issued separately.

SO ORDERED, this 17th day of October, 2023.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE

¹ This includes any claims asserted against them in their “supervisory” capacities. See Doc. #109 at PageID 621 n.2. Since these defendants are not sued in their official capacities, no claims against them remain.